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Supreme Court of the United States

October Term, 1955.

No. 171

LESTER E. WOOLSEY, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI.

ROYAL D. WOOLSEY,
Attorney for Petitioner,
Canastota, N. Y.

JAMES O. MOORE, JR.,
Genesee Building,
Buffalo, N. Y.

THE REPORTER COMPANY, INC., Walton, N. Y.—1956

Supreme Court of the United States

LESTER E. WOOLSEY

vs.

UNITED STATES OF AMERICA.

Petition for Certiorari.

The Petitioner, Plaintiff-Appellant, Lester E. Woolsey, feeling himself aggrieved by the decision of the Court of Appeals for the Second Circuit, which decision affirmed the decision of the Trial Court for the Northern District of New York, dismissing plaintiff's complaint, and in which decision the Court of Appeals adopted the opinion of the Trial Court, hereby prays for an appeal to the Supreme Court of the United States from such decision, entered on the 28th day of March, 1956. Said petition for appeal is made pursuant to the Laws of the United States and the revised rules of the Supreme Court of the United States, and in particular Part V, paragraph 23, of said rules. Said petition is based upon facts known by petitioner and upon information and belief as to interpretation of the laws applicable thereto.

(a) The only previous opinion in this case is that of the District Court, affirmed by the United States Court of Appeals for the Second Circuit, as shown by a copy of the decision as found in (b) (1) following.

(b) The grounds on which the jurisdiction of this Court is invoked are as follows:

(i) The following is a copy of the decision of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 247—October Term, 1955.

(Argued March 15, 1956 Decided March 28, 1956.)

Docket No. 23906.

LESTER E. WOOLSEY,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,
Defendant-Appellee.

Before:

Frank, Lumbard and Waterman,
Circuit Judges.

Appeal from the United States District Court for the Northern District of New York, Foley, Judge. Affirmed.

Royal D. Woolsey (Canastota, New York), attorney for plaintiff-appellant.

Charles K. Rice, Acting Assistant Attorney General, Lee A. Jackson, A. F. Prescott, Morton K. Rothschild (Washington 25, D. C.), attorneys for the defendant-appellee.

Per Curiam:

The decision of the District Court is affirmed on the opinion of Judge Foley.

(ii) No hearing or extension of time yet requested.

(iii) Jurisdiction of this Court is conferred by the following Laws:

a. Constitution of the United States, Article III, Paragraph 2. "Original and appellate jurisdiction of Supreme Court. * * * In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

b. Title 28, U. S. Code, Section 1254. "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods; (1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

c. Rules of this Court.

(e) The questions presented for review are as follows:

1. Does a credit on a donor's ledger, intended as a gift and accepted by donees as such, create any legal liability on the part of the donor, or grant to donees any property rights as against the donor?

The opinion of the Trial Court, adopted by the Appellate Court says "No" because there was "no delivery."

2. Does the giving of a credit on a ledger transfer intangible property rights, constituting a gift as provided under U. S. Code, Part 86, Gift Tax which law appears in part under (d) below?

3. Does a credit and acceptance of the same constitute a delivery of intangible property rights or must there be some physical delivery, if so what? The only reason given by defendant or the Courts below was that there was no completed gift because there was "no delivery."

4. Does a credit on a ledger, recognized by all concerned constitute an account stated as held by the Court of Appeals of New York State?

Appellant believes in this case (*Woolsey vs. U. S. A.*), the decision is contrary to the holding of the Court of Appeals of the State of New York as found in the case *Corr against Hoffman*, 256 N. Y. 254. The opinion in the *Corr* case states in part as follows:

> "An account stated is nothing more or less than a contract express or implied between the parties * * * an account stated is conclusive upon the parties unless fraud, mistake or other equitable considerations are shown which make it improper to be enforced."

5. Does the same question of physical delivery apply to a gift made by the discharge of an indebtedness as provided in Section 86-2 of the Tax Regulations as hereinafter quoted?

Based upon the above laws, Plaintiff-Appellant claims that the yearly credits of $3,000 to each child were completed gifts not subject to tax.

6. U. S. Code Part 86 Gift Tax, Section 86-10:

> "Except with respect to any gift of a future interest in property, the first $3,000 of gifts made to any one donee during the calendar year of 1943 or during any calendar year thereafter shall be excluded in determining the total amount of gifts for such calendar year."

The alleged errors in decision and holdings of the Trial and Appellate Court as claimed by Appellant are as follows:

1. In holding that some physical delivery was necessary to create an indebtedness by plaintiff to his daughters.

2. Refusal to hold that a gift can consist of intangible property rights.

3. In holding that credits in plaintiff's ledger did not convey or establish property rights.

4. In holding that credits in plaintiff's ledger did not place property rights beyond plaintiff's control and beyond his authority to change.

5. In holding that a credit in plaintiff's ledger did not constitute a completed gift.

6. In holding that to grant plaintiff the relief asked would make the gift tax statutes unenforceable.

(d) The U. S. laws relating to gift taxes, and in particular Section 2511, U. S. Tax Law. Federal Tax Regulation, Regulation 108, Sections 86-1 to 86-74 apply to this case.

Section 86-2 provides in part as follows:

> "'In general,' the statute imposes a tax whether the transfer is in trust or otherwise, whether the transfer is direct or indirect, or whether the property is real or personal, tangible or intangible."
>
> "Thus, for example, a taxable transfer May be effected by the *declaration* of a trust, the forgiveness of a debt, * * *"

A debt can legally be discharged orally or by a credit on a ledger without any physical delivery.

Transfer Reached. Declaration of Trust.

* * * "Inasmuch as the tax also applies to gifts indirectly made, all transactions whereby property or property rights or interest are gratuitously passed or conferred upon others, regardless of the means or device employed, constitute gifts subject to tax."

Section 86-3, paragraph 2, provides in part as follows:

"As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave to him no power to change the disposition thereof, whether for his own benefit or for the benefit of another, the gift is complete."

Section 86-50 provides in part as follows:

Addition to Tax for failure to file return.

"(a) For failure to file the return required by the Internal Revenue Code within the time prescribed or within any extension of time granted by the District Director, unless it is filed after such time and the failure is shown to have been due to a reasonable cause and not to be willful neglect," 5%-30 days 5% each 30 days thereafter not over 25%.

If the ledger credits constituted completed gifts of property rights gratuitously passed or conferred upon the daughters, no return was required.

(e) Plaintiff having practiced medicine at Hancock, New York, for many years and having been engaged in other business enterprises, desiring to provide security for his three daughters and their families and at the same time reduce his estate decided to give said daughters portions of his property. He understood, and correctly so,

that he could give each daughter $3,000 each year without any obligation to file a gift tax return or pay a gift tax. It is conceded that this was to be done partly for tax purposes which was a legitimate purpose, and to accomplish this purpose there would be no illegal act or wrong done. This constituted good business, particularly so since plaintiff had already been required to pay a considerable gift tax and penalties.

In order to accomplish his purpose plaintiff opened in his ledger a gift tax account and gave each daughter a credit of $3,000 each year from 1942 to 1950. This account was kept in his own handwriting but he was assisted by his secretary. He informed his daughters with reference to these credits and they accepted such credits as gifts from their father, their mother having died some years previous. In 1950, plaintiff transferred to his said daughters stocks consisting of Hancock Bank stock and stock of the Hancock Realty, Inc., sufficient to satisfy his indebtedness according to his account and then balance that account. The account was kept in the same ledger used for the accounts for the Hancock Realty, Inc., of which company his daughters were officers.

When the tax officials learned of the transfer of stocks in 1950, they reported the same to the government officers who assessed and collected a gift tax and penalties on the whole amount as gifts in the year 1950. Plaintiff paid the same under protest and later made application for a refund upon the ground that said assessment and penalties were illegal and unjust. Said application for refund was denied and the present action was brought to recover the amount of the taxes and assessments claimed to have been illegally collected. A complaint was served in November, 1954. The case was tried at Albany, New York, before Honorable James T. Foley, United States District Judge on June 16, 1955. A decision and judgment was rendered

dismissing the complaint which was docketed on October 1, 1955. Decision of the Court of Appeals was entered March 28, 1956.

Appellant claims that the gifts to his daughters consisted of yearly credits on his ledger. It was not a gift of stock or stocks. The stocks were transferred to satisfy and balance plaintiff's indebtedness as shown by his ledger account.

The daughters gave full value for the stocks when transferred, by permitting the ledger account to be balanced, cancelling donors indebtedness to them.

(f) Not applicable.

(g) United States Code Annotated—Title 28—Section 1331.

> "Federal question; amount in controversy. The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. June 25, 1948, c. 646, 62 Stat. 930."

(h) The Supreme Court should exercise its discretion and grant a review of this case for the following reasons:

1. The Court of Appeals for the Second Circuit has decided an important question or questions of law contrary to the holding of the Court of Appeals of the State of New York as found in the case of *Corr vs. Hoffman*, 256 N. Y. 254.

2. The decision of the U. S. Court of Appeals in this case relates to questions not heretofore definitely passed upon by the U. S. Supreme Court, viz.: The legal value of a ledger account and its binding effect on the parties involved. These questions are important questions of

Federal Law which should be settled by this Court. Appellant has found no case holding directly on the laws of bookkeeping neither defendant's attorneys nor the Courts below have cited any case directly deciding these questions. To constitute a gift there must be, of course, a delivery if the property is tangible, but plaintiff does not claim to have given stocks or securities, but gave credit on his ledger account and satisfied his account by transferring stocks and balancing his account. The whole matter was closed before the United States Revenue officials stepped in.

The credits on donor's ledger constituted delivery of intangible property rights.

3. The Courts have departed from the usual and accepted proceedings by saying nothing about the real issue, but simply said there was no completed gift because there was no delivery. The Courts held that no property rights were transferred. A ledger account represents property rights of an intangible nature of which there can be no physical delivery.

The Court of Appeals adopted the opinion of the Trial Court which included any error the Trial Court may have made. If the Supreme Court should find that the Trial Court was in error, the Appellate Court adopted such errors and the case should be reviewed and plaintiff-appellant granted judgment for the relief asked for in the Complaint.

The daughters gave and the plaintiff received full value for the securities transferred by the balancing of the gift tax ledger account, known and relied upon by all of the parties concerned.

It was an improper interpretation of the law for the Court to hold that the rights of a concededly honest person should be denied, because it might interfere with the

enforcement of the tax laws, as against some dishonest person. The Court did not explain how it could interfere and petitioner is unable to follow such reasoning.

(i) Copy of the Trial Court's opinion and findings are included in the petitioner's appendix, nine copies of which are filed with this petition. The printed appendix contains the whole record.

(j) Not applicable.

WHEREFORE petitioner prays for a review of the above case by the Supreme Court of the United States and after such review a reversal of the decision of the Trial Court as affirmed by the United States Court of Appeals for the Second Circuit together with such other and further relief as is just and equitable.

LESTER E. WOOLSEY,
Petitioner.

ROYAL D. WOOLSEY,
Attorney for Petitioner,
Office and Post Office Address,
Canastota, New York,

JAMES O. MOORE, JR.,
Genesee Building,
Buffalo, New York.

State of New York,
County of Delaware, ss:

LESTER E. WOOLSEY, being duly sworn, deposes and says that he resides at Hancock, Delaware County, New York. He has read the foregoing petition and knows the contents thereof, and the same is true to his own knowledge except as to matters therein stated upon information and belief and as to those he believes them to be true.

LESTER E. WOOLSEY.

Subscribed and sworn to before me this
17th day of May, 1956.
Frieda I. Chamberlain,
Notary Public, State of N. Y., Delaware Co. No. 18.
Commission Expires March 30, 1957.

APPENDIX.

Memorandum Decision of Foley, D. J.

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Appearances:

Royal D. Woolsey, Esq., attorney for plaintiff; office & P. O. Address, 210 South Peterboro Street, Canastota, New York.

Theodore F. Bowes, Esq., United States Attorney, Federal Building, Syracuse 1, New York.

Charles J. Miller, Esq., Asst. U. S. Attorney; H. Brian Holland, Esq., Asst. Attorney General, Andrew D. Sharpe, George T. Rita, attorneys, Department of Justice (of counsel).

HON. JAMES T. FOLEY, D. J.:

This suit is for the recovery of gift taxes and penalty paid by the plaintiff under protest to the Government. The tax was assessed for alleged gifts made by the plaintiff taxpayer during the year 1950 and the statutory penalty of 25% was imposed and assessed for failure to file the gift tax return within the time provided by law. The case was heard by the Court without a jury, and the testimony and exhibits presented at the trial disclose a factual background that is simple and undisputed.

In my judgment, there is little need for much discussion. It is clear that the essential element of proper delivery is lacking to uphold the alleged gifts to the three daughters for the years 1943 through 1949. The en-

tries on the ledger sheets in the plaintiff's ledger or book account, intended as a credit to the daughters and/or debit to the plaintiff throughout the years, do not approach the most liberal interpretations of the delivery requirement necessary to make an effective gift (*Edson v. Lucas*, 8 Cir., 40 F. 2d 398; *Richardson v. Commissioner of Internal Revenue*, 2 Cir., 126 F. 2d 562; *Speaker v. Keating*, 2 Cir., 122 F. 2d 706; *Apt v. Birmingham*, 89 F. Supp. 361, 370-71). Here we have not the slightest semblance to a real transfer of property or property right with the relinquishment of any dominion and control. Although I have no reason to doubt the sincerity of the plaintiff, if such entries as he made were ruled sufficient, the gift tax provisions of the Internal Revenue Code, in my judgment, would become unenforceable.

Nor do I have difficulty to uphold judicially the penalty imposed except for the natural reluctance against such harsh method of enforcement. No matter my feeling, the record made here would not allow refund of the penalty under the construction of the phrase "reasonable cause" as made by higher authority which binds me (*Haywood Lumber & Mining Co. v. Commissioner of Internal Revenue*, 2 Cir., 178 F. 2d 769; see also *In Re Fisk's Estate*, 203 F. 2d 358; *Commissioner of Internal Revenue v. American Assn. of Engineers Employment Inc.*, 7 Cir., 204 F. 2d 19). There is no evidence to the effect that the plaintiff taxpayer relied on the advice of counsel or of expert accountants sought and received in good faith. The burden to excuse the failure to file is on the taxpayer (*Berlin v. Commissioner*, 2 Cir., 59 F. 2d 996; *Sabatini v. Commissioner*, 2 Cir., 98 F. 2d 755, 756; *Credit Bureau of Greater New York, Inc., v. Commissioner*, 2 Cir., 162 F. 2d 7, 9). The informal and haphazard method of inquiry testified to by the plaintiff is an inadequate and insufficient showing to excuse the penalty.

Findings of Fact.

The plaintiff made entries in his permanent and daily ledger account for the years 1943 through 1949 of the sum of $3,000.00 to each daughter (Exhibits 1, 2). There was no transfer of any stock, money, property or property right to the daughters during these years until the transfer of certain stock for the accumulated credits during the year 1950. The plaintiff did not relinquish dominion or control over the stock until the year 1950.

At indefinite times before 1950, the plaintiff discussed the gift tax problem informally with a New York bank, an attorney, on one occasion, whose background of practice is unknown, and three unidentified tax agents. There was no formal or written advice obtained by the plaintiff taxpayer in any instance. The plaintiff was advised to file gift tax return in 1952, failed to do so, and the assessment of the tax was made in 1953.

Conclusions of Law.

The Court has jurisdiction of the parties and subject matter; the entries in the ledger sheets did not constitute valid and effective gifts during the years in issue, because of failure of proper delivery; the gift tax was properly assessed and imposed for the transfer of stock in 1950; there is no adequate showing of "reasonable cause" nor ordinary business care and prudence to excuse the failure to file the gift tax return for 1950 and allow the refund of the penalty imposed.

Judgment shall enter for the defendant dismissing the complaint in its entirety.

Dated: Albany, New York, September 30, 1955.

JAMES T. FOLEY
United States District Judge

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 171

LESTER E. WOOLSEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (Pet. 13–15) is reported at 138 F. Supp. 952. The *per curiam* opinion of the Court of Appeals (Pet. 2) is reported at 230 F. 2d 948.

JURISDICTION

The judgment of the Court of Appeals was entered on March 28, 1956. The petition for a writ of certiorari was filed on June 18, 1956. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

During the years 1943 through 1949 the taxpayer voluntarily made entries in his ledger which purported to create an indebtedness to each of his three daughters in the amount of $3,000 each year. In

1950 he transferred to his daughters, in substantially equal portions, shares of stocks having an aggregate value of $56,000, supposedly in discharge of the "debts" shown on the ledger.

The question is whether both courts below were correct in holding tnat the taxpayer's book entries did not represent an enforceable indebtedness, so that the transfer of the stock in 1950 was made without any consideration in money or money's worth and was taxable as a gift under Sections 1000–1002 of the Internal Revenue Code of 1939.

STATUTE AND REGULATIONS INVOLVED

The relevant portions of the Internal Rvenue Code of 1939, Sections 1000 (a), 1002, 1003 (a) and (b), 1004 (a) (1), 1005, 1006 (a) and (b), 1018, and 3612 (d) (1), and Treasury Regulations 108, Section 86.2 (a) (5), are set forth in the Appendix, *infra*, pp. 7–10.

STATEMENT

The taxpayer made voluntary entries in his permanent and daily ledger account for the years 1943 through 1949 purporting to show a "debt" of $3,000 each year to each of his three daughters. There was no transfer of any stock, money, property or property rights to the daughters during these years. (Pet. 15.) In 1950 the taxpayer, supposedly in discharge of these "debts," transferred to the three daughters certain stock which had a value of $56,000. (R. 22a–24a, 36a–39a.) The taxpayer did not relinquish dominion or control over the stock until the year 1950. (Pet. 15.)

At indefinite times before 1950 the taxpayer discussed the gift tax problem informally with a New York bank, an attorney, and three unidentified tax agents. There was no formal or written advice obtained by the taxpayer in any instance. The taxpayer was advised to file a gift tax return in 1952; he failed to do so, and the assessment of the tax for the transfer of stock in 1950 was made in 1953, together with a penalty for failure to file a gift tax return. (Pet. 15.)

The District Court held that the entries in the ledger sheets did not constitute valid and effective gifts during the years 1943 through 1949 because of failure of proper delivery, that the gift tax was properly assessed and imposed for the transfer of stock in 1950, and that there was no adequate showing of reasonable cause for failure to file the gift tax return for 1950. (Pet. 15.) The Court of Appeals affirmed in a *per curiam* opinion. (Pet. 2.)

ARGUMENT

1. The decision of the court below, affirming the decision of the District Court, is clearly correct. The taxpayer in 1950 transferred stocks with an aggregate value of $56,000 to his three daughters. Unless the daughters furnished consideration in money or money's worth for those transfers, within the meaning of Section 1002 of the Internal Revenue Code of 1939 (Appendix, *infra,* p. 7), the transfers were gifts within the meaning of Section 1000 (a) (Appendix, *infra,* p. 7). The taxpayer failed to file a gift tax return for 1950 (Pet. 15), apparently because he considered that the transfers in 1950 were made

to satisfy his indebtedness to his three daughters, as shown by the bookkeeping entries in his ledger (Pet. 7; R. 21a–22a, 44a). In this manner, instead of the exclusion of $3,000 permitted for the total amount of gifts to one person during one year under Section 1003 (b) (3) of the 1939 Code (Appendix, *infra*, p. 8), the taxpayer assumed an exclusion of at least $21,000 for each daughter for the year 1950 ($3,000 a year for seven years), and so eliminated any gift subject to the gift tax.

But the taxpayer's argument that the yearly credits of $3,000 to each of his three daughters during the years 1942 through 1949 were gifts which created valid debts (Pet. 7, 8) has no merit, as the courts below held (Pet. 15, 2). Even if the taxpayer had attempted to create a debt by delivering his promissory note, it would not have represented a valid, present gift of an enforceable promise. As the New York Court of Appeals, speaking through Judge Cardozo, said in *Dougherty* v. *Salt*, 227 N. Y. 200, 202, such a note is a "voluntary and unenforcible promise of an *executory gift* * * *." (Emphasis added.)*

The present case, where the taxpayer attempted to create a debt by his own book entries, and where nothing was delivered (see *Richardson* v. *Commissioner*, 126 F. 2d 562, and *Speaker* v. *Keating*, 122 F. 2d 706, both decided by the court below), is an *a fortiori* situation compelling the conclusion that

* See also *French* v. *Commissioner*, 138 F. 2d 254, 258 (C. A. 8th); G. C. M. 16460, XV–1 Cum. Bull. 369 (1936); *Brown on Personal Property* (2d ed.), Section 59, p. 188, and cases cited in fn 26.

the daughters had been given nothing before 1950 and had no enforceable rights against the taxpayer. It is equally clear that since the daughters gave no consideration for the bookkeeping entries of $3,000 for each of seven years, there was no valid account stated. See II *Restatement of the Law of Contracts,* Section 422, Comment f; *French* v. *Commissioner,* 138 F. 2d 254, 258 (C. A. 8th); *Johnson* v. *Commissioner,* 86 F. 2d 710, 713 (C. A. 2d).

In short, there was no consideration for the taxpayer's transfer of the stock in 1950 and it was properly held to be taxable as a gift.

2. There is no conflict of decisions. Although the taxpayer alleges (Pet. 8) that the decision of the court below is contrary to that of the New York Court of Appeals in *Corr* v. *Hoffman,* 256 N. Y. 254, the latter case is substantially different. In that case one partner instituted proceedings against his co-partner, alleging misappropriation of partnership funds through fraudulent records and entries in the firm books. The defendant had furnished the plaintiff with annual statements of account of partnership profits, and the evidence showed that the plaintiff accepted the accounts submitted by the defendant over a period of years. While the referee found that some of the book entries were false and misleading, he exonerated the defendant from charges of fraud and misappropriation of partnership funds; he decided that the entries were made in good faith, for legitimate purposes, and caused no injury to the plaintiff. The Appellate Division upheld the referee in substance, and the Court of Appeals affirmed the

decision of the referee. While the account stated in that case was a valid contract, as the court decided, there was no account stated in this case because of the absence of consideration. See p. 5, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

HILBERT P. ZARKY,
MORTON K. ROTHSCHILD,
Attorneys.

JULY, 1956.

APPENDIX

Internal Revenue Code of 1939:

SEC. 1000. IMPOSITION OF TAX.

(a) For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. * * *

* * * * *

(26 U. S. C. 1952 ed., Sec. 1000.)

SEC. 1002. TRANSFER FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(26 U. S. C. 1952 ed., Sec. 1002.)

SEC. 1003. NET GIFTS.

(a) *General Definition.*—The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 1004.

(b) [As amended by Sec. 454, Revenue Act of 1942, c. 619, 56 Stat. 798] *Exclusions from gifts.*

* * * * *

(2) *Gifts after 1938 and prior to 1943.*—In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year 1939 and subsequent calendar years prior to

1943, the first $4,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(3) *Gifts after 1942.*—In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1943 and subsequent calendar years, the first $3,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(26 U. S. C. 1952 ed., Sec. 1003.)

SEC. 1004 [As amended by Sec. 455, Revenue Act of 1942, *supra*]. DEDUCTIONS.

In computing net gifts for the calendar year 1942 and preceding calendar years, there shall be allowed (except as otherwise provided in paragraph (1) of subsection (a)) such deductions as are provided for under the gift tax laws applicable to the years in which the gifts were made.

In computing net gifts forthe calendar year 1943 and subsequent calendar years, there shall be allowed as deductions:

(a) *Residents* .—In the case of a citizen or resident—

(1) *Specific exemption.*—An exemption of $30,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which the tax is being computed under the laws applicable to such years. This exemption shall be applied in all computations in respect of the calendar year 1942 and previous calendar years for the purpose of computing the tax for the calendar year 1943 or any calendar year thereafter.

* * * * *

(26 U. S. C. 1952 ed., Sec. 1004.)

(26 U. S. C. 1952, ed., Sec. 1006.)

SEC. 1005. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(26 U. S. C. 1952, ed., Sec. 1005.)

SEC. 1006. RETURNS.

(a) *Requirement.*—Any individual who within the calendar year 1940 or any calendar year thereafter makes any transfers by gift (except those which under section 1003 are not to be included in the total amount of gifts for such year) shall make a return under oath in duplicate. The return shall set forth (1) each gift made during the calendar year which under section 1003 is to be included in computing net gifts; (2) the deductions claimed and allowable under section 1004; (3) the net gifts for each of the precedig calendar years; and (4) such further information as may be required by regulations made pursuant to law.

(b) *Time and Place for Filing.*—The return shall be filed on or before the 15th day of March following the close of the calendar year with the collector for the district in which is located the legal residence of the donor, or if he has no legal residence in the United States, then (unless the Commissioner designates another district) with the collector at Baltimore, Maryland.

SEC. 1018. ADDITION TO THE TAX IN CASE OF DELINQUENT RETURN.

For addition to the tax in case of failure to make and file a return required by this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of the law, see section 3612 (d) (1).

(26 U. S. C. 1952 ed., Sec. 1018.)

SEC. 3612. RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.

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(d) *Additions to Tax.*—

(1) *Failure to file return.*—In case of any

failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided,* That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

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(26 U. S. C. 1952 ed., Sec. 3612.)

Treasury Regulations 108, Relating to the Gift Tax under the Internal Revenue Code of 1939:

SEC. 86.2 *Transfers Reached.*—(a) *In general.*— * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transfers were not made for an adequate and full consideration in money or money's worth:

* * * * *

(5) If A with his own funds purchases property and has the title thereto conveyed to himself and B as joint owners, with rights of survivorship (other than a joint ownership described in example (4) of this section), but which rights may be defeated by either party severing his interest, there is a gift to B in the amount of one-half the value of such property.

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